

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-0235-T - ORDER NO. 2000-747  
SEPTEMBER 8, 2000

IN RE: Application of American International Movers, ) ORDER  
Inc., 816 Highway 41 South, Forsyth, Georgia ) GRANTING  
31209 for Approval *nunc pro tunc* of a ) TRANSFER  
Transfer of Assets from Cary F. Weathers )  
Transfer & Storage, Co., Including Class E )  
Certificate of Public Convenience and )  
Necessity. )

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Application of American International Movers, Inc., 816 Highway 41 South, Forsyth, Georgia 31209 (AIM) for approval *nunc pro tunc* of a transfer of assets from Carey F. Weathers Transfer and Storage Co. (Weathers), including Weathers' Class E Certificate of Public Convenience and Necessity, which was originally issued on March 25, 1959. The Class E Certificate in question allows for the movement of Household Goods as defined in 26 S.C. Code Regs. 103-210(1) (Supp. 1999) between points and places in South Carolina.

The Commission's Executive Director instructed AIM to publish a Notice of Filing in a newspaper of general circulation in the service areas desired. The Notice of Filing instructed the public as to how to file pleadings to participate in the proceedings on the Application. No Protests or Petitions to Intervene were received.

A hearing on the Application of AIM was held on August 16, 2000 at 2:30 PM in the Commission's hearing room. The Honorable William Saunders, Chairman, presided. American International Movers, Inc. was represented by John J. Pringle, Jr., Esquire. AIM presented the testimony of Henry Hicks. The Commission Staff was represented by F. David Butler, General Counsel. The Staff presented no witnesses.

Henry Hicks, Director and President of American International Movers, testified in support of the Application. Hicks noted that on August 6, 1999, Weathers filed for Chapter 7 Bankruptcy Protection in the United States Bankruptcy Court for the Southern District of Georgia, Augusta Division. On March 22, 2000, the Trustee in Bankruptcy issued a Trustee's Bill of Sale transferring to AIM "all right, title, and interest" in a number of Weathers' assets, including that Company's Certificate of Public Convenience and Necessity. AIM seeks Commission approval of the Trustee's sale of the Certificate.

AIM is a household goods carrier incorporated in 1983. The Company presently offers interstate service to the 48 continental United States, and intrastate service in the states of Georgia, Alabama, and Tennessee. Warehouses and offices are located in Enterprise, Alabama, Forsyth, Georgia, and Augusta, Georgia. The Company has a fleet of power equipment consisting of 54 trucks and tractors. AIM is actively engaged in the transportation of household goods, primarily for the Department of Defense.

Hicks noted that he had been involved with the moving industry, either directly or through relations, his entire life. Hicks is the third generation of his family that has owned and operated moving and storage companies. Hicks began his career in 1984 as a billing clerk. He also was employed in Sales, and worked as a dispatcher in the

Operations area. In 1995, he assumed all administrative responsibilities for AIM and its affiliated companies, but states that he has continued to remain involved with the operational aspects of the business. Hicks states that he is knowledgeable in all aspects of the business, and has been active in industry associations through the years. Hicks was President of the Georgia Movers Association in 1997, and has been active in other organizations and committees throughout the industry.

President Hicks also noted that AIM operates ten (10) vehicles that will be used to provide its moving services in the State of South Carolina, all of which are model year 1990 or later. AIM filed insurance information demonstrating its awareness of the Commission's insurance requirements and the costs associated therewith.

In addition, Hicks testified that transfer of the Certificate and AIM's operation thereunder will enhance the services provided to the public. Further, Hicks stated that AIM will obtain a South Carolina Department of Public Safety rating upon approval of the transfer by the Commission. Also, Hicks testified that there are no outstanding judgments against the Company, and the Company submitted a balance sheet along with its Application demonstrating its financial fitness. AIM further stated that it is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina, and AIM agrees to operate in compliance with these statutes and regulations.

Upon cross-examination, Hicks discussed AIM's "conditional" rating with the U.S. Department of Transportation. The Company appeared to have an "out of service" rate for both drivers and equipment that was higher than the national average. Hicks

stated that since this rating, AIM has hired a full-time safety officer to oversee the Company's safety program. A late-filed exhibit provided for a time period after the safety officer was hired showed improvement in the "out of service" rate for equipment, although it did not show improvement in the driver "out of service" category.

Improvement is continuing, however, according to Hicks.

Hicks states a belief that AIM's operation under the Certificate will have a positive impact on service to the citizens of South Carolina. AIM notes that it will join the South Carolina Tariff Bureau, and adopt that organization's tariff.

The issue of twelve months continuous service by Weathers prior to the filing of the Application was also addressed by Hicks. Hicks noted that AIM filed bills of lading demonstrating Weathers' provision of service prior to its Chapter Seven bankruptcy filing in August of 1999.

Finally, Hicks testified that the granting of the Application is in the public interest, and that approval of the transfer would enhance the competitive market for household goods in South Carolina.

Our regulation on the transfer of a Certificate of Public Convenience and Necessity is found at 26 S.C. Code Ann. Regs. 103-135 (Supp. 1999). The regulation states that the Commission shall approve an application for sale of a Certificate of Public Convenience and Necessity upon finding (1) that the sale will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate or control thereof is fit, willing, and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered

and reasonably provided to the public for a period of time not less than twelve months prior to the date of the filing of the application for approval of the sale. The regulation goes on to state that if the application does not contain evidence that the authorized services have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application, the application may be denied (emphasis added). The regulation further states that no sale will be approved where such action would be destructive of competition or would create an unlawful monopoly.

Regulation 103-135(6) prohibits the sale for value of any Certificate of Public Convenience and Necessity issued subsequent to July 1, 1983. We would note that the record reflects that the Certificate in question was issued in 1959. This portion of the regulation therefore does not apply to the case at bar.

Applying the law to the facts before us, we are convinced that the sale will not adversely affect the service to the public under the certificate in question. Based on the testimony of President Hicks, we believe that the opposite is true, i.e. that the transfer of the Certificate and AIM's operation thereunder will enhance the services provided to the public. Hicks appears to have years of experience in the moving business, and the Company is well-established in other states in the Southeast. We believe that the Company will provide an excellent alternative to the members of the public who may be seeking the services of a mover.

Second, we believe that AIM is fit, willing, and able to provide service under the Certificate in question. Hicks testified as to the Company's equipment, insurance

coverage, personnel, lack of judgments, and experience in the moving business. Whereas, the Company presently has a “conditional” safety rating from the U.S. Department of Transportation, we note that many of the deficiencies addressed in that report have been addressed in a positive fashion by the Company, and that the Company has hired a full-time safety officer to monitor its safety program. Major improvement has been shown in the “equipment out of service” category.

We also do not believe that granting the transfer will be destructive of competition or create an unlawful monopoly.

The major difficulty present in this case is that AIM was unable to show that all services under the existing Certificate have been continuously offered and reasonably provided to the public for a period of not less than twelve months prior to the filing of the Application for approval of the sale. Of course, under this scenario, the Application may be denied pursuant to the regulation.

We consider the word “may” to indicate that a denial is permitted under these circumstances, but not required. We would note that AIM provided evidence of eight months continuous service prior to its Bankruptcy filing in August of 1999. Our Regulation 103-101(2) provides for a waiver of our rules under certain circumstances. “These rules are subject to such exceptions as may be considered just and reasonable as ordered by the Commission in individual cases when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest....” We believe that the present situation justifies a waiver under these rules. We believe that the Bankruptcy in this case produces unusual difficulty in complying with the twelve months continuous

service requirement, and that the Company has done the best it can to comply with the rule by submitting proof of eight months of continuous service. We do not think that it is in the public interest to deny the transfer on the basis of a lack of evidence of twelve months continuous service in this case where the Company is otherwise worthy to enter the moving business in South Carolina. We therefore waive the requirement of Regulation 103-135(4)(3) in this particular case, and hold that the Company has met the other elements of proof in this case.

Because of the discussion above, we hereby hold that the Application for transfer of Weather's assets, including the certificate at issue, is granted, *nunc pro tunc*, as filed.

IT IS THEREFORE ORDERED:

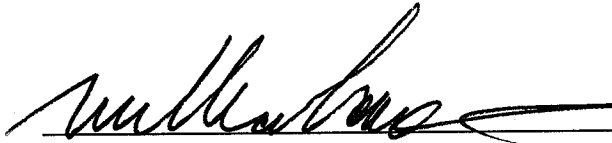
1. That the Application of American International Movers, Inc for approval *nunc pro tunc* of a transfer of assets (including the Certificate of Public Convenience and Necessity) from Cary F. Weathers Transfer and Storage Company is hereby approved as filed.
2. That the Applicant file the proper license fees and other information required by S.C. Code Ann. Section 58-23-10 et seq. (1976), as amended, and by R.103-100 through R.103-241 of the Commission's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 26 (1976), as amended, and R.38-400 through 38-503 of the Department of Public Safety's Rules and Regulations for Motor Carriers, S.C. Code Ann. Vol. 23A (1976), as amended within sixty (60) days of the date of this Order, or within such additional time as may be authorized by the Commission.

3. That upon compliance with S.C. Code Ann. Section 58-23-10, et. seq. (1976), as amended, and the applicable Regulations for Motor Carriers, S. C. Code Ann. Vol. 26 (1976), as amended, a certificate shall be issued to the Applicant authorizing the motor carrier services granted herein.

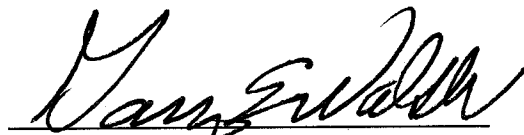
4. That prior to compliance with such requirements and receipt of a certificate, the motor carrier services authorized herein may not be provided.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)